

United States District Court
Western District of Texas
Del Rio Division

John J. Palmer,
Plaintiff,

v.

USPS – APWU (EAGLE PASS),¹ MARIO
CARDENAS, President for the American
Postal Workers Union,
Defendants.

No. 2:21-cv-00030

Notice of Removal of Civil Action

Pursuant to 28 U.S.C. § 1442(a), the United States Postal Service (“USPS”) hereby removes to the United States District Court, Western District of Texas, the above-captioned case, currently docketed as Civil Action No. 21-06-40037-MCVAJA in the District Court of Maverick County, Texas (“State Court Case”).

In support of removal, the USPS submits the following:

1. On June 2, 2021, Plaintiff filed a Petition in State court, attached hereto as Exhibit 1. The USPS has not been properly served with the Citation or Petition pursuant to Federal Rule of Civil Procedure 4(i). Trial has not been set or held.
2. The State Court Case is removable under 28 U.S.C. § 1442(a)(1) because Plaintiff has brought his claims against the USPS, an agency of the United States.
3. This Notice is timely under 28 U.S.C. § 1446(b). However, the USPS has not been properly served—the USPS maintains and reserves all defenses with respect to defects in the service of process. This notice of removal meets the 30-day deadline contemplated under 28 U.S.C. § 1446(b), as it is being filed less than 30 days after the filing of the Petition in this case. *See, e.g.,*

¹ The Office of the United States Attorney represents the USPS. Co-defendant APWU is represented by separate counsel.

Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 347–48 (1999) (time to remove is not triggered until the defendant is formally served with process, even if the defendant receives a copy of the plaintiff’s Petition through informal channels before that time); *Quality Loan Service Corp. v. 24702 Pallas Way, Mission Viejo, CA 92691*, 635 F.3d 1128, 1133 (9th Cir. 2011) (holding that plaintiff’s notice to federal government was insufficient to constitute formal process and thus did not trigger 30-day period for federal government to remove state court action, where plaintiff had not served the Petition upon the United States attorney or sent copies of process and Petition by registered or certified mail to the Attorney General).

4. The State Court Case is removable to this Court as “the district court of the United States for the district and division embracing the place wherein . . . [the State Court Case] is pending.” 28 U.S.C. § 1442(a).

5. Pursuant to 28 U.S.C. § 1446(a), the USPS attaches hereto copies of all State Court Case pleadings, orders, and other state court filings received upon request from the Maverick County, Texas Clerk of District Court, including:

- a. Exhibit 1: Plaintiff’s Original Petition*
- b. Exhibit 2: Request for Issuance of Summons*
- c. Exhibit 3: Citation Issued*
- d. Exhibit 4: Citation Returned Executed*
- e. Exhibit 5: Citation Returned Executed*

6. The USPS may raise federal defenses to the Petition.

7. Pursuant to the provisions of 28 U.S.C. § 1446(d), a Notice of Filing Notice of Removal will be filed with the 365th District Court in Maverick County, Texas in the State Court Case. A true and correct copy is attached hereto as Exhibit 6.

8. Pursuant to Local Court Rule CV-3(a), a JS 44, Civil Cover Sheet is attached hereto as Exhibit 7.

9. As this federal case is being initiated through removal, a Supplement to JS 44 is attached hereto as Exhibit 8.

10. For the reasons stated above, the State Court Case is subject to removal to the United States District Court for the Western District of Texas.

WHEREFORE, the USPS hereby gives notice of removal of the State Court Case from the 365th District Court for Maverick County to the United States District Court for the Western District of Texas, Del Rio Division.

Respectfully submitted,

Ashley C. Hoff
United States Attorney

By: /s/ Kristin K. Bloodworth

Kristin K. Bloodworth
Assistant United States Attorney
Texas Bar No. 24095848
kristin.bloodworth@usdoj.gov
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7368 (phone)
(210) 384-7312 (fax)

Attorneys for USPS

Certificate of Service

I certify that on July 1, 2021, I sent a true and correct copy of the foregoing Notice of Removal by mail to:

John J. Palmer,
3427 Tina Drive
Eagle Pass, Texas 78852

/s/ Kristin K. Bloodworth

Kristin K. Bloodworth
Assistant United States Attorney